

Members

Rep. Ralph Foley, Chairperson
Rep. Eric Koch
Rep. Robert Kuzman
Sen. Joseph Zakas, Vice-Chairperson
Sen. Brent Steele
Sen. John Broden
Tim Sendak
Dave Pendergast
Tom Hardin
Chris Colpaert
Kris Fruehwald
Dan Reeves
Jim Martin
Ora Kincaid
Joseph H. Davis
Judge Tom Lowe



PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Ross Hooten, Attorney for the Commission
James Landers, Fiscal Analyst for the Commission

Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: September 19, 2006
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Ralph Foley, Chairperson; Rep. Eric Koch; Sen. Joseph Zakas, Vice-Chairperson; Sen. Brent Steele; Tim Sendak; Dave Pendergast; Tom Hardin; Kris Fruehwald; Dan Reeves.

Members Absent: Sen. John Broden; Rep. Robert Kuzman; Chris Colpaert; Jim Martin; Ora Kincaid; Joseph H. Davis (excused); Judge Tom Lowe.

Representative Foley called the meeting to order at 1:10 p.m.

Attorney Jeff Kolb presented the Commission with the 2007 legislative priorities of the Probate, Trust, and Real Property Section of the Indiana State Bar Association (ISBA). Mr. Kolb's testimony began with a review of a number of ideas that the Commission had recommended to the General Assembly in the 2005 interim. The 2005 recommendations

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were introduced to the General Assembly in Senate Bills 114 and 115. As SB 114 moved through the legislative process, a pair of provisions from SB 115 was amended into SB 114. Thus, the passage of SB 114 meant that some, but not all of the Commission's 2005 recommendations had become law. Mr. Kolb asked the Commission to renew its support for the passage of the remaining parts of SB 115-2006 (Exhibit A). The provisions of SB 115 that did not pass in 2006 include:

- (1) several changes to the administration of the inheritance tax;
- (2) a new statute to allow trusts to claim certain property tax deductions;
- (3) an increase in the small estate affidavit amount from \$25,000 to \$50,000; and
- (4) a new statute providing in certain circumstances that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy.

Mr. Kolb then submitted a number of additional changes to the Indiana probate and trust laws (Exhibit B). The proposed changes include repealing IC 23-4-3 concerning accounting by surviving partners. Mr. Kolb explained that this 1877 law has been rendered obsolete by Indiana's adoption of the Uniform Partnership Act. The other new proposals affect:

- (1) notice provisions in various probate proceedings;
- (2) distributions following the termination of a guardianship;
- (3) the time period for presenting a will for probate following a will contest;
- (4) the appointment of fiduciaries as custodians under the Uniform Transfer to Minors Act;
- (5) the requirement that a trust's taxpayer identification number be included in a trust certification document;
- (6) the discovery necessary to determine whether an estate can be summarily administered with a small estate affidavit; and
- (7) the personal representative's right to take possession of the decedent's property.

The Commission sought additional testimony from the public on the proposals submitted by Mr. Kolb. Mr. Jim Cousins, President of the Indiana Bankers Association, noted that while the association is generally in agreement with the ISBA, it had not yet viewed the specific language of the new proposals. Mr. Cousins promised a more detailed response upon seeing the language.

The Commission discussed the various proposals, occasionally suggesting changes to the submitted language.

The Commission then turned its attention to other topics. Representative Foley raised the issue of the marketing of living trusts. Mr. Kolb described recent cases in Ohio and Indiana and the ongoing efforts of the ISBA to prevent the unlicensed practice of law. Mr. Kolb stated that while participating in the ISBA's efforts he had never thought about whether the Commission should become involved. He added that he would not recommend getting involved to the Commission.

Senator Zakas asked the Commission to support a resolution in favor of the abolishment of the Indiana inheritance tax. When the ensuing voice vote on the matter included one "nay" vote, final action on the resolution was impossible under IC 2-5-16-6.5 which requires nine affirmative votes for the Commission to take final action.

Mr. Sendak asked the Commission to consider legislation to amend the living will declaration form to include the ability to name an attending physician and alternate physicians to serve in the event that the named attending physician is unable to abide by the declaration.

Representative Koch asked the Commission to consider whether courts should be allowed to control guardianship funds until the protected person reaches the age of twenty-five.

Representative Foley directed counsel to prepare preliminary drafts for the Commission's consideration at its next meeting, which the Commission scheduled for Tuesday, October 10 at 1:30 p.m.

Seeing no further business before the Commission, Representative Foley adjourned the meeting at 2:30 p.m.